

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

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DONALD J. TRUMP, Candidate for President of the  
United States of America,

Plaintiff,

v.

Case No.: 2:20-cv-01785-BHL

THE WISCONSIN ELECTIONS COMMISSION, and its  
Members, ANN S. JACOBS, MARK L. THOMSEN,  
MARGE BOSTELMANN, DEAN KNUDSON,  
ROBERT F. SPINDELL, JR., in their official capacities,  
SCOTT MCDONELL in his official capacity as the Dane  
County Clerk, GEORGE L. CHRISTENSON in his  
official capacity as the Milwaukee County Clerk,  
JULIETTA HENRY in her official capacity as the  
Milwaukee Election Director, CLAIRE WOODALL-  
VOGG in her official capacity as the Executive Director  
of the Milwaukee Election Commission, MAYOR TOM  
BARRETT, JIM OWCZARSKI, MAYOR SATYA  
RHODES-CONWAY, MARIBETH WITZEL-BEHL,  
MAYOR CORY MASON, TARA COOLIDGE,  
MAYOR JOHN ANTARAMIAN, MATT KRAUTER,  
MAYOR ERIC GENRICH, KRIS TESKE, in their  
official capacities; DOUGLAS J. LA FOLLETTE,  
Wisconsin Secretary of State, in his official capacity, and  
TONY EVERS, Governor of Wisconsin, in his official capacity,

Defendants.

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**MOTION TO DISMISS FILED ON BEHALF OF DEFENDANTS SATYA RHODES-  
CONWAY, MAYOR OF MADISON, MARIBETH WITZEL-BEHL, CITY CLERK OF  
MADISON, AND SCOTT MCDONELL, COUNTY CLERK OF DANE COUNTY**

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Defendants Satya Rhodes-Conway, Mayor of Madison, Maribeth Witzel-Behl, City Clerk  
of Madison, and Scott McDonell, County Clerk of Dane County, by their counsel Boardman &

Clark, LLP, and Michael P. May, James E. Bartzen and Barry J. Blonien, move to dismiss this action:

- (A) Under F. R. Civ. Pro. 12(b)(1), for lack of subject matter jurisdiction.
- (B) Under F. R. Civ. Pro. 12(b)(6), for failure to state a claim upon which relief may be granted.
- (C) Under the abstention principles of *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995), and *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491(1942).

Defendants respectfully submit and show the Court:

1. That the plaintiff lacks standing;
2. That plaintiff's claims are moot;
3. That plaintiff's claims are barred by principles of laches;
4. That the Court lacks the judicial power to grant the relief sought by the plaintiff;
5. That actions pending in the courts of the State of Wisconsin compel the Court to abstain from exercising its jurisdiction in this action;
6. That the complaint fails to state a claim for relief upon which relief may be granted with respect to the defendants who hold the position of mayor of a city, as mayors have no role in the conduct of elections under Wisconsin law;
7. That the complaint fails to state a claim for relief upon which relief may be granted with respect to the defendants who hold the position of clerk of a municipality, since the 2020 election has been held, and no emergency exists with respect to the next regularly scheduled election (Non-partisan Spring Primary Election, Tuesday, February 16, 2021, and Spring Election, Tuesday, April 6, 2021.)

8. That the complaint fails to state a claim for relief upon which relief may be granted because the complaint fails to allege any form of fraud or misadministration of the election that impacted a single ballot, much less the outcome of the election.
9. Such other grounds as may be argued to the Court.

In the alternative, Defendants move to stay this action under the abstention principles of *Railroad Comm'n of Texas v. Pullman Co.*, 312 US 496 (1941).

This motion is supported by the pleadings and documents of record and the Combined Brief of Wisconsin Municipal Officials in Support of Their Respective Motions to Dismiss and in Opposition to Request for Emergency Relief.

Dated this 8<sup>th</sup> day of December, 2020.

BOARDMAN & CLARK LLP  
By

/s/ Michael P. May

Michael P. May, SBN 1011610  
James E. Bartzen, SBN 1003047  
Barry J. Blonien, SBN 1078848  
Attorneys for Defendants Mayor Satya Rhode-  
Conway, Maribeth Witzel-Behl and  
Scott McDonnell

U.S. Bank Plaza, Suite 410  
1 South Pinckney Street  
P.O. Box 927  
Madison, Wisconsin 53701-0927  
(608) 257-9521  
[mmay@boardmanclark.com](mailto:mmay@boardmanclark.com)  
[jbartzen@boardmanclark.com](mailto:jbartzen@boardmanclark.com)  
[bblonien@boardmanclark.com](mailto:bblonien@boardmanclark.com)